REMARKS

The Final Office Action mailed June 7, 2005, has been received and reviewed. Claims 1 through 19 and 21 through 41 are currently pending in the application. Claims 1 through 19 and 21 through 41 stand rejected. Applicants propose to amend claims 19, 29, and 41, and respectfully request reconsideration of the application as proposed to be amended herein.

35 U.S.C. § 103(a) Obviousness Rejections

Obviousness Rejection Based on U.S. Patent No. 5,694,393 to Kaye in View of U.S. Patent No. 6,874,039 to Ganapathy et al.

Claims 1 through 19, 21 through 25, 29 through 31, and 36 through 38 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Kaye (U.S. Patent No. 5,694,393) in view of Ganapathy et al. (U.S. Patent No. 6,874,039). Applicants respectfully traverse this rejection, as hereinafter set forth.

> M.P.E.P. 706.02(j) sets forth the standard for a Section 103(a) rejection:
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> To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or combine reference teachings. Second, there must be a reasonable expectation of success. Finally, **the prior art reference (or references when combined) must teach or suggest all the claim limitations.** The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991). (Emphasis added).

Regarding claim 1, Applicants respectfully traverse the Office Action assertion that Ganapathy teaches the element of Claim 1 recited as, "employing an **opportunistic data transfer** between the first and second communication nodes across the dynamic connection **while the dynamic connection is activated**." The Office Action states,

> "Ganapathy indicates utilizing opportunistic data transfer (refer to Col 6, Lines 10-20). At the time of the invention, it would have been obvious to a person of ordinary skill in the art to indicate utilizing the opportunistic data transfer. The suggestion/motivation for doing so would have been Kaye indicates the nodes transferring information by propagating information from one node (which consist

of switch center that stores which can register/store subscriber units because the SWC consists of a routing table, refer to Col 3, Lines 55-67 and Col 4, Lines 1-60."

However, Applicants can find no reference in Ganapathy to a dynamic connection. Rather, in Ganapathy, the communication channel (i.e., connection) between the data memory 302 and core DMA controller 203 is continuously established. The "opportunity" in Ganapathy is to steal memory cycles when the core processors 200A-200N are not using the memory. Ganapathy states "the DMA process can read from the memory location(s) in the data memory 302 when available. The core processors 200A-200N have a higher priority to access the memory banks, and the DMA controller cycle steals to get access to the data memory for opportunistic reads and writes."

In contrast, the "opportunity" as recited in claim 1, is to transfer data when a "dynamic connection" is established because the communication nodes are within communication range of each other. Therefore, Applicants assert that the prior art references of Kaye and Ganapathy do not teach or suggest all the claim limitations recited in claim 1, as is required for a 30 U.S.C. § 103 rejection. Namely, the claim element of "employing an **opportunistic data transfer** between the first and second communication nodes across the dynamic connection **while the dynamic connection is activated**," is not taught or suggested. In other words, neither reference teaches opportunistic data transfers that may occur due to the establishment of a dynamic connection.

In addition, Applicants assert that there is no suggestion or motivation in either prior art reference to combine opportunistic data transfers with a dynamic connection. Applicants can find no suggestion or motivation in Ganapathy, with its cycle stealing transfers, to create an opportunistic data transfer during communication of a dynamic connection. Similarly, Applicants can find no suggestion or motivation in Kaye to indicate that an opportunistic data transfer protocol may be useful within the dynamic connection framework of Kaye.

As to another portion of claim 1, Applicants respectfully assert that Kaye does not teach or suggest the "**monitor element**," as recited in claim 1. In responding to Applicants' remarks in a previous amendment, dated March 28, 2005, the Examiner states in this Office Action that,

the first monitor (first monitor party/subscriber M, Col 9, lines 42-67) at the first communication node and a second monitor (monitored party/subscriber B, refer to Col 9, lines 42-67) at the second communication node to determine when the first and second communication node are within communication range still stand (refer to Col 7, Lines 40-60) because some nodes in the group are a default coverage nodes, because the user is registered at a node A, refer to Col 6, Lines 20-67, and once the node A is within the coverage range, it is able to communicate with other node within the range, and once the node A leave the coverage area, it will become a "roaming."

Claim 1 recites, "using a **first monitor** at the first communication node and a **second monitor** at the second communication node **to determine when the first and second communication nodes are within communication range**." In other words, in claim 1 the monitoring elements in the first and second communication nodes, monitor signals, and signal strengths, to determine when the nodes are within communication range, such that a network connection may be established. This is apparent from the specification stating, "execution begins with decision block 80, which determines whether or not one or more communication nodes are within communication range. In a dynamically mobile data communication system, all communication nodes listen for all other communication nodes. When any two or more communication nodes are within communication range a dynamic LAN is created in step 82. Alternatively, if decision block 80 determines that communication node is not within communication range of any other communication node, the communication node that is out of range waits until it is within communication range with one or more other communication nodes" (page 14, line 21 to page 15, line 6).

However, in the passages from Kaye cited by the Examiner, and in general when discussing "monitoring," Kaye apparently presumes network connections are established, and the "monitoring" in Kaye is defined as "In some systems there may be a requirement to **monitor the activity of individual subscribers**" (col. 9, lines 42-43). It appears to Applicants that the monitor in Kaye is for monitoring "**activity**" of a subscriber, which only occurs because the communication channel is already established. In contrast, in claim 1 of the present application, the monitors function to determine if and when a network connection may be established.

In addition, Kaye defines the monitor function in one node and the subscriber to be monitored as another node, with no mention of a monitor in the subscriber to be monitored.

Kaye apparently does describe a "second monitor" at a second communication node. However, this second monitor is to monitor the "activity" of the individual subscriber. In other words, the "activity" monitoring in Kaye may be considered a master/slave monitoring, wherein the subscriber to be monitored is not considered to have an "activity monitor." This is evidenced by Kaye stating "there may be a requirement to monitor the activity of individual subscribers and in order to do this an authorized subscriber (typically, but not necessarily, a dispatcher) makes a request on any node to monitor any individual subscriber (referred to as the monitored party)" (col. 9, lines 42-46). In contrast, claim 1 of the present application recites a peer-to-peer, or mutual monitoring of the ability to communicate by both the first and second communication nodes such that both communication nodes may determine when a network connection may be established. Therefore, Applicants assert that the prior art references of Kaye and Ganapathy do not teach or suggest all the claim limitations recited in claim 1, as is required for a 30 U.S.C. § 103 rejection. Namely, the claim element of "using a **second monitor** at the second communication node **to determine when the first and second communication nodes are within communication range**," is not taught or suggested.

For these reasons, claim 1 is now allowable and Applicants respectfully request that the rejection of claim 1 be withdrawn.

Regarding claims 2-18, these claims depend from now allowable claim 1. Therefore, at least due to their dependency from claim 1, claims 2-18 are now allowable and Applicants respectfully request that the rejection of claims 2-18 be withdrawn.

Regarding claim 19, the analysis regarding opportunistic data transfer, set forth above with respect to claim 1, is equally applicable to the claim 19 element of "an opportunistic data transfer protocol component located at each communication node of the plurality." Therefore, a 35 U.S.C. § 103 rejection is improper because the prior art references of Kaye and Ganapathy do not teach or suggest all the claim limitations recited in claim 19. As a result, Applicants respectfully request that the rejection of amended claim 19 be withdrawn.

Regarding claims 21-25, these claims depend from now allowable claim 19. Therefore, at least due to their dependency from claim 19, claims 21-25 are now allowable and Applicants respectfully request that the rejection of claims 21-25 be withdrawn.

Regarding claim 29, the analysis regarding opportunistic data transfer, set forth above with respect to claim 1, is equally applicable to the claim 29 element of "determining whether a first communication node and a second communication node are within communication range, wherein if the first and second communication nodes are within communication range, performing an opportunistic data transfer." Therefore, a 35 U.S.C. § 103 rejection is improper because the prior art references of Kaye and Ganapathy do not teach or suggest all the claim limitations recited in claim 29. As a result, Applicants respectfully request that the rejection of claim 29 be withdrawn.

Regarding claims 30 and 31, these claims depend from now allowable claim 29. Therefore, at least due to their dependency from claim 29, claims 30 and 31 are now allowable and Applicants respectfully request that the rejection of claims 30 and 31 be withdrawn.

Regarding claim 36, the analysis regarding opportunistic data transfer, set forth above with respect to claim 1, is equally applicable to the claim 36 element of "determining whether a first communication node and a second communication node are within communication range, wherein the first communication node is mobile; and wherein if the first and second communication nodes are within communication range, performing an opportunistic data transfer." Therefore, a 35 U.S.C. § 103 rejection is improper because the prior art references of Kaye and Ganapathy do not teach or suggest all the claim limitations recited in claim 36. As a result, Applicants respectfully request that the rejection of claim 36 be withdrawn.

Regarding claims 37 and 38, these claims depend from now allowable claim 36. Therefore, at least due to their dependency from claim 36, claims 37 and 38 are now allowable and Applicants respectfully request that the rejection of claims 37 and 38 be withdrawn.

Obviousness Rejection Based on U.S. Patent No. 5,694,393 to Kaye in View of U.S. Patent No. 6,874,039 to Ganapathy et al. and Further in View of U.S. Patent No. 6,141,686 to Jackowski et al.

Claims 26 through 28, 32 through 35, and 39 through 41 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Kaye (U.S. Patent No. 5,694,393) in view of Ganapathy et al. (U.S. Patent No. 6,874,039) and further in view of Jackowski et al. (U.S. Patent No. 6,141,686). Applicants respectfully traverse this rejection, as hereinafter set forth.

Regarding claims 26-28, these claims depend from now allowable claim 19. Therefore, at least due to their dependency from claim 19, claims 26-28 are now allowable and Applicants respectfully request that the rejection of claims 26-28 be withdrawn.

Regarding claims 32-35, these claims depend from now allowable claim 29. Therefore, at least due to their dependency from claim 29, claims 32-35 are now allowable and Applicants respectfully request that the rejection of claims 32-35 be withdrawn.

Regarding claims 39-41, these claims depend from now allowable claim 36. Therefore, at least due to their dependency from claim 36, claims 39-41 are now allowable and Applicants respectfully request that the rejection of claims 39-41 be withdrawn.
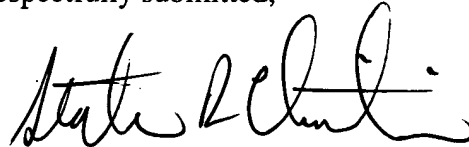
ENTRY OF AMENDMENTS

The proposed amendments to claims 19, 29, and 41 above should be entered by the Examiner because the amendments are supported by the as-filed specification and drawings, do not add any new matter to the application, and only correct minor spelling or grammar errors. Further, the amendments do not raise new issues or require a further search. Finally, if the Examiner determines that the amendments do not place the application in condition for allowance, entry is respectfully requested upon filing of a Notice of Appeal herein.

CONCLUSION

Claims 1-19 and 21-41 are believed to be in condition for allowance, and an early notice thereof is respectfully solicited. Should the Examiner determine that additional issues remain which might be resolved by a telephone conference, the Examiner is respectfully invited to contact Applicants' undersigned attorney.

Respectfully submitted,

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